IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9324 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

VIRSING PRATAPSING CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

Mr. U.R. Bhatt, AGP for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 27/03/98

ORAL JUDGEMENT

The petitioner, at present under detention, pursuant to the order of detention dated 10th October 1997, passed by the Police Commissioner for the city of Ahmedabad, invoking his powers under Section 3 of the Gujarat Prevention of Anti-Social Activities Act (for short "the Act"), calls in question the legality and validity of that order preferring this application under Article 226 of the Constitution of India.

2. The Police Commissioner, when examined the records of different police stations, found that about four complaints were lodged against the petitioner in Sheharkotda police station. As alleged in all the four complaints the petitioner along with his compeers had

committed the theft of 60 to 100 Kgs. gun metals, a cycle and other materials and had thereby committed the offence punishable under Section 454, 457, 380 read with Section 114 of the Indian Penal Code. The Police Commissioner also found that the people were feeling insecured because of constant fear of violence from the petitioner. After inquisition he knew that the petitioner was a dangerous person, i.e., a tartar or a decimator and by his different criminal wrongs he was terrorising the people and disturbing the public order. He was extorting money by coercive measures and putting the persons or shopkeepers to imminent death or injury. Those who refused to help him were brutally beaten or they had to face dire consequences. No one was willing to make the statement or lodge the complaint against the petitioner, every one thought it wise to keep his lips tight and it was because of fear of violence from the petitioner. As the people were not challenging his activities, the petitioner was becoming more and more wicked and was expanding his network, the result whereof was shattering and battering of the public order. When accordingly the activities challenging the public order were going berserk, the Police Commissioner thought it fit to take stern action so as to curb the anti-social activities of the petitioner. Any action under the general law sounding dull was found to be a futile exercise. Even the order of externment was found to be unproductive. The Commissioner of Police therefore thought it fit to pass the order in question as that was the only way out to curb the anti-social activities of the petitioner. He therefore passed the order, got the petitioner arrested, and at present pursuant to that order the petitioner is kept under detention. He has therefore preferred this application calling in question the legality and validity of the order of detention.

3. On several grounds, the order of detention is assailed, but at the time of making submissions before me, the learned advocates representing the parties tapered off their submissions confining their submissions to the only point namely exercise of privilege under Section 9(2) the Act. According to the learned advocate representing the petitioner there was no just cause to suppress the particulars about the witnesses. Without any application of mind mechanically the authority passing the order suppressed the particulars, with the result for want of sufficient particulars the petitioner could not effectively make the representation against the order and even could not point out why the statements were required to be ignored or whether the statements were reliable or not. On behalf of the State, Mr. U.R.

Bhatt, the learned A.G.P. in reply submitted that considering other aspects and factors emerging on the record placed before the Commissioner of Police the privilege was exercised. There was in fact the application of mind and not as alleged mechanically the privilege was exercised.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-discosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task

of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujrat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

5. In view of such law, it was incumbent upon the authority passing the order to satisfy the court filing the affidavit that it was absolutely in the public interest considering the safety of the witnesses necessary to withhold certain particulars about the witnesses. In this case, no such affidavit is filed. It can, therefore, be assumed that without any just cause the privilege is exercised, and there is non-application of mind. Reading the order, it appears that the task to ascertain whether the fear expressed by the witnesses was genuine or imaginary was entrusted to the other officer who after making necessary enquiry reported to the detaining authority. He then simply accepted the report placing full trust in the officer who made a report and did not personally inquire into the matter after the report was filed. There is, therefore, non-application of mind while taking the decision about the exercise of the privilege. When that is the case, in view of the above stated law the continued detention must be held unconstitutional and illegal.

6. For the aforesaid reasons, the present application is allowed. The order of detention dated 10th October 1997 is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule accordingly

made absolute.